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4009/015

**Application Serial No.: 10/775,087**

**Amendment After Final**

## Remarks

The Applicant respectfully requests reconsideration of the present application based on the foregoing amendments and the following remarks.

Additionally, the Applicant wishes to thank Examiner Haney and Examiner Moran for the courtesy of extending an Interview on March 23, 2006 to Applicant's representative, James J. Bindseil. During the Interview, the prior art and the claims were discussed, and language was discussed that defined over the cited references. Further, the Examiners agreed that no new issues were raised. Thus, the Interview was helpful for reaching a mutual understanding of the recited claim language.

In the above amendments, claims 10, 11, 18, 21-23, 31 and 32 have been amended. All of these amendments and new claims are fully supported throughout the specification. No new issues have been raised, and no new matter has been added. Therefore, after entry of the above amendments, claims 10-34 will be pending in this application.

## Claim Amendments

The Applicant has amended claims 10, 21, 31 and 32 to recite, among other things, a first opening and an opposing second opening defined by the attachment of the second fabric member/band/second means, respectively, to the first fabric member/scarf/first means, respectively. For example, in claim 10, the first opening is configured to expose a face of the person wearing the article of headwear, and the second opening is configured to expose a rear portion of the head of the person. Additionally, for example, the Applicant amended claim 31 to additionally recite a shared rear edge, between the first portion and second portion of the second means, which is adjacent to the first means at the attachment and which defines the second opening. Support for these amendments may be found throughout the specification.<sup>1</sup> Further, no new issues have been raised, as discussed during the March 23, 2006 Interview, as the recited structure of some of the previously presented claims provide a basis for these amendments.<sup>2</sup>

Additionally, the Applicant has amended claim 11 to correct a typographical error, as is discussed below.

<sup>1</sup> See, e.g., Figs. 3-6 and the associated discussion.

<sup>2</sup> See, e.g., previously presented claims 14, 18, 22, 23 and 31.

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Further, the Applicant has amended claims 18 and 23 to recite, among other things, an oblique angle between the longitudinal axis of the first/scarf member and the second/band member at their attachment. Similarly, the Applicant has amended claim 32 to recite, among other things, a predetermined oblique angle at the point of attachment between the first side edge of the second fabric member and the first fabric member. These amendments are fully supported through the specification.<sup>3</sup> Further, these amendments do not raise new issues as this structure was previously considered.<sup>4</sup>

Additionally, the Applicant has amended claim 22 to recite that the second intermediate portion is unattached to the first intermediate portion. This amendment is fully supported through the specification.<sup>5</sup> Further, this amendment does not raise new issues as this structure was previously considered.<sup>6</sup>

### *Claim Objection*

The Examiner objected to claim 11 based on the error in syntax regarding the recitation of the term “intermediated.” As noted above, the Applicant has amended claim 11 to correct this typographical error, replacing “intermediated” with -- intermediate --. Therefore, the objection is now moot, and the Applicant respectfully requests that the Examiner withdraw the objection to claim 11.

### *Rejections under 35 USC § 102(b)—Rosenberg*

The Examiner rejected claims 10, 11, 13, 14, 17-19, 21-26, 30 and 32-34 under 35 USC § 102(b) as being anticipated by US Patent No. 2,083,616 to Rosenberg. The Applicant respectfully traverses this rejection, as Rosenberg does not disclose or suggest the recited article of headwear.

In particular, Rosenberg does not disclose or suggest at least the combination of the first fabric member/scarf member respectively attached to the second fabric member/band member so as to define between them a first opening and an opposing second opening, as recited by claims 10, 21 and 32. The assembly of Rosenberg does not include the recited opposing openings between the two members defined by the

<sup>3</sup> See, e.g., Figs. 4 and 6.

<sup>4</sup> See, e.g., previously presented claim 32.

<sup>5</sup> See, e.g., Figs. 4-6.

<sup>6</sup> See, e.g., among others, previously presented claims 10, 22, 31 and 32; and Figs. 4-6.

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attachment of the two members, as the hood portion or blank 14 is connected to neck band 10 at all sides but one. For example, blank 14 is folded and one side is stitched together, at stitch line 17, while the ends 15 are stitched to the neck band 10.<sup>7</sup> As all but one of the sides/ends of blank 14 are connected to neck band 10, by definition there cannot be more than one opening between the blank 14 and neck band 10. This point was discussed at length during the Examiner Interview and consented to by the Examiners. Thus, for at least these reasons, Rosenberg does not disclose or suggest the features recited by claims 10, 21 and 32.

Additionally, Rosenberg does not disclose or suggest the features of claims 11, 13, 14, 17-19, 22-26, 30 and 33-34 for at least the same reasons, as these claims are depend from at least one of claims 10, 21 and 32. Thus, for at least these reasons, Rosenberg does not disclose or suggest the features recited by claims 11, 13, 14, 17-19, 22-26, 30 and 33-34.

Therefore, based on the above remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 10, 11, 13, 14, 17-19, 21-26, 30 and 32-34 under 35 USC § 102(b) as being anticipated by US Patent No. 2,083,616 to Rosenberg.

*Rejection under 35 USC § 102(b)--Grant*

The Examiner rejected claim 31 under 35 USC § 102(b) as being anticipated by US Patent No. 3,088,119 to Grant. The Applicant respectfully traverses this rejection, as Grant does not disclose or suggest the recited article of headwear.

In particular, Grant does not disclose or suggest at least the combination of the first means respectively attached to the second means by a predetermined spacing so as to define between them a first opening and an opposing second opening, as recited by the claim. Alternatively, Grant does not disclose or suggest, at least, the shared rear edge between the first portion and second portion of the second means, which is adjacent to the first means at the attachment and which defines the second opening. The scarf B of Grant is not attached to the collar A in a manner that discloses or suggests the claimed configuration that defines opposing openings between the means.<sup>8</sup> Thus, for at least these reasons, Grant does not disclose or suggest the features recited by claim 31.

<sup>7</sup> US Patent No. 2,083,616 to Rosenberg, col. 1, line 52 to col. 2, line 9; and Figs. 1-5.

<sup>8</sup> See, e.g., US Patent No. 3,088,119 to Grant, Fig. 5.

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Therefore, based on the above remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 31 under 35 USC § 102(b) as being anticipated by US Patent No. 3,088,119 to Grant.

***Rejections under 35 USC § 103(a)—Rosenberg in view of Williams***

The Examiner rejected claims 12 and 27 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 3,668,707 to Williams. The Applicant respectfully traverses this rejection, as Rosenberg and Williams, in any combination, do not disclose or suggest the recited article of headwear.

The Examiner admits that Rosenberg does not include the recited second intermediate width being less than the respective end widths.<sup>9</sup> The respective ends of the recited second fabric member/band member are attached to the first fabric member/scarf member. In contrast, the ends of the lady's headpiece of Williams are free and not attached to any other part of the headpiece. As such, Williams does not disclose or suggest at least the combination of the first width at an intermediate portion of the second fabric member/band member being less than a second width at the ends of the second fabric member/band member, where the respective ends are attached to the first fabric member/scarf member, as recited by claims 12 and 27.

Additionally, there is no motivation disclosed in either cited reference for any combination of features that would suggest the recited invention. In the Office Action, the Examiner merely states that it would have been obvious to combine the cited references to make the present invention.<sup>10</sup> This is an insufficient showing of motivation.

Therefore, the Examiner has not yet set forth a *prima facie* case of obviousness, as there is not motivation to combine the references, and as Rosenberg and Williams, in any combination, do not disclose or suggest the features recited by claims 12 and 27.

Therefore, based on the above remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 12 and 27 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 3,668,707 to Williams.

<sup>9</sup> Office Action mailed March 7, 2006, page 5, paragraph number 5.

<sup>10</sup> See, e.g., Office Action at page 5, last sentence of paragraph number 5.

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***Rejections under 35 USC § 103(a)—Rosenberg in view of Murphy***

The Examiner rejected claims 15, 16, 28 and 29 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 6,056,156 to Murphy. The Applicant respectfully traverses this rejection, as Rosenberg and Murphy, in any combination, do not disclose or suggest the recited article of headwear.

The deficiencies of Rosenberg are well noted above, and the addition of Murphy does not solve these deficiencies. In particular, Murphy does not disclose or suggest at least the combination of the first fabric member/scarf member respectively attached to the second fabric member/band member so as to define between them a first opening and an opposing second opening, as recited by these claims. In contrast, Murphy discloses a scarf having a knot pleat, which does not include the attached configuration of first fabric member/scarf member and second fabric member/band member which define the recited openings.

Additionally, there is no motivation disclosed in either cited reference for any combination of features that would suggest the recited invention. In the Office Action, the Examiner merely states that it would have been obvious to combine the cited references to make the present invention.<sup>11</sup> This is an insufficient showing of motivation.

Therefore, the Examiner has not yet set forth a *prima facie* case of obviousness, as there is no motivation to combine the references, and as Rosenberg and Murphy, in any combination, do not disclose or suggest the recited article of headwear.

Therefore, based on the above remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 15, 16, 28 and 29 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 6,056,156 to Murphy.

***Rejections under 35 USC § 103(a)—Rosenberg in view of Ensten***

The Examiner rejected claim 20 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 2,039,478 to Ensten. The Applicant respectfully traverses this rejection, as Rosenberg and Ensten, in any combination, do not disclose or suggest the recited article of headwear.

<sup>11</sup> See, e.g., Office Action at page 6, last sentence of paragraph number 6.

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The deficiencies of Rosenberg are well noted above, and the addition of Ensten does not solve these deficiencies. In particular, Ensten does not disclose or suggest at least the combination of the first fabric member/scarf member respectively attached to the second fabric member/band member so as to define between them a first opening and an opposing second opening, as recited by these claims. In contrast, Ensten discloses a knitted headwear having a skull covering portion 1 with all but one side attached to a neck piece 2. By definition, there cannot be more than one opening between the skull covering portion 1 and neck piece 2 of Ensten.

Additionally, there is no motivation disclosed in either cited reference for any combination of features that would suggest the recited invention. In the Office Action, the Examiner merely states that it would have been obvious to combine the cited references to make the present invention.<sup>12</sup> This is an insufficient showing of motivation.

Therefore, the Examiner has not yet set forth a *prima facie* case of obviousness as there is no motivation to combine the cited references, and as Rosenberg and Ensten, in any combination, do not disclose or suggest the recited article of headwear.

Therefore, based on the above remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 20 under 35 USC § 103(a) as being obvious over US Patent No. 2,083,616 to Rosenberg in view of US Patent No. 2,039,478 to Ensten.

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<sup>12</sup> See, e.g., Office Action at page 6, last sentence of paragraph number 7.

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**Conclusion**

Based on the above, it is believed that this application is now in condition for allowance, for which early action is requested.

The Examiner is invited to telephone Applicant's representative, James J. Bindseil, with any questions or comments that may expedite the issuance of this case.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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